

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

VarTec Telecom, Inc. (U 5384-C), VarTec Telecom Holding Company, Teleglobe Holdings (U.S.) Corporation, Excel Telecommunications, Inc. (U 4303-C), eMeritus Communications, Inc. (U 5526-C), and Long Distance Wholesale Club, Inc. (U 5653-C), for Authority for Transfers of Control.

Application 01-10-026
(Filed October 22, 2001)

**ASSIGNED COMMISSIONER'S RULING
SETTING SCOPE AND SCHEDULE FOR THIS PROCEEDING**

This ruling sets a scope and schedule for this matter, given the protest filed by the Commission's Consumer Services Division (CSD). The proceeding is not consolidated with Application (A.) 99-04-011, as requested by CSD. Instead, a hearing is scheduled to consider factual matters pertaining to the stock purchase agreement that is the subject of this application. The scope of this case will involve whether the Commission should approve the stock purchase agreement.

Background

Applicants¹ filed this application on October 22, 2001 requesting authority for Vartec and Vartec Holding to purchase Excel, eMeritus, and LDWC. On

¹ The applicants in this matter are Vartec Telecom Inc. (Vartec), Vartec Telecom Holding Company (Vartec Holding), Teleglobe Holdings Corporation, Excel

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December 3, 2001, CSD filed a protest requesting consolidation of this matter with A.99-04-011, which involves Vartec's request for a certificate of public convenience and necessity (CPCN) to serve the local exchange market. CSD alleges that evidence it will present in A.99-04-011 (hereinafter "CPCN application") will show that Vartec violated the Public Utilities Code by acquiring and selling telecommunications carriers without the Commission's prior approval and without proper notice to customers.

Applicants respond that allegations made in the CPCN application should be handled independently from the stock purchase agreement at the heart of the instant application. Applicants also claim that notice to customers is not required for the transaction underlying this application because it is purely a stock purchase arrangement and not a customer base transfer for which notice rules apply. Applicants state that CSD has not shown that the stock purchase agreement violates any Public Utilities Code sections or Commission orders.

On February 4, 2002, Applicants filed a motion to strike the protest of CSD and a Motion for expedited consideration of this matter. At a prehearing conference held on February 14, 2002, the assigned administrative law judge (ALJ) Duda, denied the motion to strike the protest of CSD.

Consolidation

I will deny CSD's request to consolidate this application with Vartec's CPCN application because the issue of whether to approve the stock purchase agreement is a discrete issue that can be handled separately from the broader issues in the CPCN application. Nevertheless, I find that the Commission should

Telecommunications, Inc. (Excel), eMeritus Communications Inc. (eMeritus), and Long Distance Wholesale Club Inc. (LDWC).

not consider approving the stock purchase agreement, which would allow Vartec to control two local exchange carriers, until it has considered CSD's allegations that Vartec violated section 851 and other Commission orders in the CPCN application. The Commission should first consider Vartec's fitness to serve the local exchange market in the CPCN application. If the Commission proceeded to review the stock purchase agreement in this application ahead of the CPCN matter, it would prejudice the CPCN application. The issues in the CPCN application should be heard and decided before the Commission acts on the stock purchase agreement. Another option would be for the Commission to grant approval of the stock purchase agreement conditioned on a grant of entry into the local exchange market in the CPCN case.

Therefore, I will set a schedule for this matter that considers any issues CSD has with the stock purchase agreement so that an order can be prepared immediately following Commission action on the CPCN application. This same schedule will allow ALJ Duda to consider preparing an order that conditions approval of the stock purchase agreement on a favorable outcome in the CPCN matter. Applicants' motion to set an expedited schedule in this matter is denied.

Scope

The issue in this case is whether the Commission should grant approval of the stock purchase agreement wherein Vartec and Vartec Holding Company acquire Excel, eMeritus, and LDWC. This case will not directly consider the issues raised in the CPCN application. Therefore, parties should avoid duplicate testimony on issues raised in the CPCN case, such as whether Applicants violated the Public Utilities Code or other Commission orders. Those issues will be resolved in the CPCN case and a decision in this matter will consider the outcome found there. Parties may request that the Commission take official

notice of portions of testimony or hearing transcripts from the CPCN application on the issue of potential violations. In general, the record in this case should not duplicate the record of the CPCN case.

CSD raises in its protest the issue of whether Applicants violated the Commission's customer notice provisions through this stock purchase agreement. In their motion to strike CSD's protest, Applicants state that customer notice is not required for stock purchase arrangements, as articulated by the Commission most recently in Decision (D.) 02-01-038.² I agree with the Applicants that the Commission has made clear that customer notice is not required for stock purchase transactions. Therefore, if CSD intends to pursue its statement that this transaction violates customer notice provisions, it will need to show that the transaction is not a mere stock purchase agreement but involves a customer base transfer.

Schedule

The schedule for this matter is as follows:

CSD Testimony	March 20, 2002
Applicant's Rebuttal Testimony	March 27, 2002
Evidentiary Hearing (Note: the evidentiary hearings may not raise any disputed issues of fact)	April 10 and 11, 2002
Opening Briefs	May 2, 2002
Reply Briefs	May 13, 2002
Submission Date	May 13, 2002
ALJ's Proposed Decision	Pending Commission order in A.99-04-011

² See D.02-01-038, *mimeo* at p. 19.

In addition, ALJ Duda will hold a telephonic prehearing conference with the parties at 2:00 p.m. on April 8, 2002 to discuss any procedural issues in advance of the hearing.

Category

This ruling confirms the Commission's preliminary finding in Resolution ALJ 176-3075, filed on November 8, 2001, that the category for this proceeding is ratesetting. Resolution ALJ 176-3075 preliminary determined that hearings were not necessary in this matter. Given CSD's protest, hearings are necessary in this matter.

Ex Parte Communications

The *ex parte* rules set forth in Rule 7 and 7.1 of the Commission's Rules of Practice and Procedure apply to this application.

Principal Hearing Officer

Pursuant to Pub. Util. Code Section 1701.3, ALJ Duda is designated as the principal hearing officer in this application.

IT IS RULED that:

1. The scope and schedule for this proceeding are set forth above, although the schedule is subject to change by further ruling of the ALJ.
2. Applicant's February 4, 2002 motion for expedited consideration is denied.
3. ALJ Duda is the principal hearing officer in this matter.
4. This proceeding is ratesetting and hearings are necessary.

Dated March 1, 2002, at San Francisco, California.

/s/ Loretta M. Lynch
Loretta M. Lynch
Assigned Commissioner

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Assigned Commissioner's Ruling Setting Scope and Schedule for this Proceeding on all parties of record in this proceeding or their attorneys of record.

Dated March 1, 2002, at San Francisco, California.

/s/ Antonina V. Swansen

Antonina V. Swansen

N O T I C E

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